

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 04-2075

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United States of America,

Appellee,

v.

Eliseo Espinoza Rios, also known as  
Fernando,

Appellant.

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Appeal from the United States  
District Court for the  
District of Minnesota

[Unpublished]

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Submitted: October 22, 2004

Filed: November 8, 2004

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Before RILEY, McMILLIAN, and GRUENDER, Circuit Judges.

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PER CURIAM.

Eliseo Espinoza-Rios (Rios) appeals from the final judgment entered in the United States District Court<sup>1</sup> for the District of Minnesota upon appellant's plea of guilty to conspiring to distribute and possess with intent to distribute at least 5,000 grams of cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. The district court granted the government's motion under 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1 for a downward departure based on substantial assistance, and

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<sup>1</sup>The Honorable Paul A. Magnuson, United States District Judge for the District of Minnesota.

sentenced Rios below the 120-month statutory minimum to 65 months imprisonment, plus 5 years supervised release. For reversal, in a brief filed pursuant to Anders v. California, 386 U.S. 738 (1967), counsel argues the district court erred in failing to grant a more substantial downward departure. Rios's displeasure with the extent of the district court's downward departure, however, is not reviewable. See United States v. Dutcher, 8 F.3d 11, 12 (8th Cir. 1993).

We have also reviewed the record independently under Penson v. Ohio, 488 U.S. 75 (1988), and we find no nonfrivolous issues for appeal.

Accordingly, we affirm the judgment of the district court. We also grant counsel's motion to withdraw, and deny the request for substitute counsel.

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